UNITED
NATIONS

CAT

Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment

Distr.
GENERAL

CAT/C/SR.90/Add.1
28 November 1991

ENGLISH
Original: FRENCH

COMMITTEE AGAINST TORTURE

Seventh session

SUMMARY RECORD OF THE SECOND PART (PUBLIC)* OF THE 90th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 12 November 1991, at 4.20 p.m.

Chairman: Mr. VOYAME

CONTENTS

Consideration of reports submitted by States parties under article 19 of the Convention (continued)

Additional report of Ecuador (continued)

* The summary record of the first part (closed) of the meeting appears as document CAT/C/SR.90.

This record is subject to correction.

Corrections should be submitted in one of the working languages. They should be set forth in a memorandum and also incorporated in a copy of the record. They should be sent within one week of the date of this document to the Official Records Editing Section, room E.4108, Palais des Nations, Geneva.

Any corrections to the records of the public meetings of the Committee at this session will be consolidated in a single corrigendum, to be issued shortly after the end of the session.

GE.91-14003/7963a

The public meeting was called to order at 4.20 p.m.

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 19 OF THE CONVENTION (agenda item 4) (continued)

Additional report of Ecuador (CAT/C/7/Add.13) (continued)

1. At the invitation of the Chairman, Mr. Medina López (Ecuador) took a place at the Committee table.

2. Mr. MEDINA LOPEZ (Ecuador) thanked the country rapporteur and the other members of the Committee for their wide-ranging and detailed questions, which reflected all of their different concerns. He would endeavour to reply to each one, however briefly.

3. With regard to the relationship between the rules of international law and, in particular, the provisions of the Convention against Torture, and the provisions of Ecuador's domestic legislation, he referred to the hierarchy of the laws, as taught in all law faculties in his country. The Constitution, as the fundamental law of the Republic, took precedence over all other instruments of domestic law and international law. In order to have the force of law, international instruments had to be approved by the National Congress. They then formed part of the hierarchical structure of domestic law and became an integral part of national legislation.

4. A rule of international law might come into conflict with a provision of domestic law. In such a case, the provisions of international instruments, which could be invoked both by individuals and by judges, courts and the competent administrative bodies, would take precedence over the rules of domestic legislation because of their more specific nature, particularly in the field of human rights. Consequently, if there was to be a reform of the domestic legal system, it would be aimed primarily at bringing the secondary provisions of domestic legislation into line with the rules of international law in order to avoid any possible confusion.

5. Referring to the organization of the legal system in Ecuador, he said that the Supreme Court was the highest court in the country. Then came the competent courts in a province or even a region composed of several districts and other types of court, such as civil and labour courts.

6. The Constitution drew a very clear distinction between the three functions of the State and specifically referred to the independence of the judiciary in relation to the executive and legislative powers. Any interference by a political authority which might hamper the functioning of justice was prohibited in the strongest possible terms.

7. Apart from the judiciary as such, Ecuador had a number of courts with specific jurisdiction, such as the Administrative Court, the Tax Court and the Juvenile Court, which was part of the executive power and, in particular, the Ministry of Social Security.

8. In response to the concerns expressed by some members about the exact role of police commissioners and officers and their power to institute proceedings, he said that the danger of political manipulation which might hamper the administration of justice in such a case had been mentioned several times. Under the system in force, such Government officials could institute proceedings or, in other words, establish that an offence had been committed, charge the alleged offender and even order pre-trial detention. Some offences automatically entailed legal proceedings. However, only the examining magistrate was authorized to take a decision on whether an offence had been committed. The legal reform currently under consideration was designed to ensure that any criminal proceedings were brought before the competent courts from the time an inquiry had started until a ruling had been handed down.

9. Concerning detention incommunicado, he explained that the contradiction between the text of the Constitution, which indicated a duration of 24 hours, and that of the Code of Penal Procedure, which indicated 48 hours, had been partly resolved by a judgement of the Court of Constitutional Guarantees stating that the provisions of the Constitution must take precedence over the other rules of domestic law and that detention incommunicado must therefore not last longer than 24 hours.

10. A person held incommunicado could have contact with his lawyer, as the right of defence was guaranteed by the Constitution. Although no machinery to facilitate such contacts had been expressly provided for by law, other practical measures had been taken to guarantee detainees the full exercise of their right of defence at all stages in the proceedings. Such measures included free advisory services offered by the Ecuadorian law faculties, which could, for example, assist detainees in their social rehabilitation efforts.

11. With regard to the comments by the country rapporteur on the functions of the examining magistrate, a distinction had to be made between pre-trial proceedings (investigación preprocesal) and trial proceedings (investigación procesal). Until 2 September 1991, when the Criminal Investigation Service had been dissolved, the National Police had been empowered to institute proceedings. In future, that would be the responsibility of the Judicial Police under the supervision of the judicial authorities. Until that specialized service had begun its operations, a transitional provision had made the National Police Command ("Comandancia general de la policia nacional") responsible for organizing such proceedings.

12. He agreed that there was no rule specifically establishing how a medical examination of a detainee who showed no sign of illness or physical injury should be carried out, but, in practice, prisons in large cities such as Quito and, in particular, in social rehabilitation centres benefited from the services of psychologists, doctors and social workers. There were not enough such persons, however, and that was further evidence that Ecuador had still some way to go in the legal and social fields.

13. In connection with measures of protection against torture, reference had been made to amparo and habeas corpus. It should have been borne in mind, however, that both those institutions were designed more to defend individual freedoms than to protect against torture.

14. Members of the Committee had also expressed concern about the fact that the municipal authorities took decisions on the constitutional aspects of habeas corpus. That measure was the result of the need to ensure the proper distribution of Government authority and the fact that, in a developing country like Ecuador, communications were sometimes difficult and power to order a detainee's release could not be entrusted to an authority related to the executive or the judiciary. That was why such power had been entrusted to mayors and the chairmen of municipal councils, who held their posts as the result of popular elections. That institution had been generally satisfactory, even though there had been some abuses of habeas corpus in the case of drug dealers.

15. However, the mayors and chairmen of municipal councils were not authorized to take any decision on the lawfulness of a warrant for arrest. Any official who refused to obey an order for the release of a detainee, which came from a mayor or the chairman of a municipal council would be liable to instant dismissal. Amparo was a remedy for which application was made to the judicial authority immediately above the court which had ordered imprisonment.

16. Replying to several members of the Committee who had expressed concern about the effectiveness of the decisions taken by the Court of Constitutional Guarantees, he noted that officials were obliged to abide by such decisions. Although the Constitution did make contempt an offence, it was true, as Mr. Gil Lavedra had pointed out, that the constitutional rule was not entirely in conformity with the provisions of the Penal Code, which referred to the "non-execution of an order from the authority". It would therefore be necessary to bring the Penal Code into line with the Constitution. However, there were other mechanisms to ensure that decisions of the Court of Constitutional Guarantees were applied; the Court could dismiss or deprive of his civil rights any official who refused to comply.

17. Another question had related to the jurisdiction of the various courts, the military and police courts in particular, which tries only offences committed by members of the armed forces or the police in the exercise of their functions, but did not try ordinary offences. The question of the division of jurisdiction had given rise to a major legal debate in Ecuador, that had assumed even greater importance with the trial of the persons involved in the Restrepo brothers' case, which, according to the court, came within the jurisdiction of the Supreme Court and the ordinary law system. A draft code of penal procedure for the national police was being prepared as part of the current legal reform and it should define more clearly in which cases offences came under the ordinary law system or the jurisdiction of the police court.

18. The Special Rapporteur had stated that he was concerned at the fact that Ecuadorian legislation used the term "tormentos" and not the term "torture". In actual fact, the semantic difference was only apparent and the context of domestic legislation showed that the two expressions were synonymous, as could be seen, for example, from article 205 of the Penal Code and article 128 of the Code of Penal Procedure, reproduced in document CAT/C/7/Add.13. Generally speaking, while domestic legislation did not always use the same vocabulary as the Convention, it was broad enough to enable judges to apply the provisions of the Convention.

19. With regard to obedience to the orders of an authority, it had been pointed out that there was a contradiction between articles 250 and 214 of the Penal Code. It was precisely in order to harmonize the rules of domestic law and to bring them into line with the provisions of the Convention that the Supreme Court of Justice had declared itself in favour of amending article 214, as mentioned in report CAT/C/7/Add.13.

20. He recalled that a decision relating to the extradition of aliens could be taken only by the Supreme Court and in the very specific conditions referred to in the report. The expulsion of aliens was also governed by strict rules. Decisions in that regard were made by the secretary-general of the police of the province where the alien was resident. The Committee should note that the secretary-general was not, contrary to appearances, a police official, but a magistrate. His decision was final except where expulsion was provisional. Expulsion could not be ordered to a country where the expelled person might be submitted to torture.

21. In reply to another question, he said that the principle of the territoriality of the law meant that Ecuadorian law applied only in the national territory, except for the offences of counterfeiting currency or State revenue stamps, which were punishable by Ecuadorian law when committed abroad. Ecuadorian law could also be applicable to Ecuadorian nationals or to aliens who had committed acts of torture abroad, but who had been arrested in Ecuador.

22. A question had been asked about the validity of confessions obtained under torture and the legal grounds for declaring such confessions null and void. Under the Civil Code, acts prohibited by law were null and void unless the law provided otherwise. Since the extraction of statements under torture was prohibited, any confessions thus obtained were automatically invalid.

23. With regard to the Ad Hoc Human Rights Committee, its members were appointed annually by Congress, to which it was required to report.

24. Questions had been asked about resignations of officers of the prison service in early 1990. The officers concerned had found defects in Ecuador's penal system and had reported them to the press. Those reports, together with investigations carried out by a number of non-governmental organizations, had led to reforms and to initiatives such as the project for the renovation of social rehabilitation centres. However, he pointed out that Ecuador was a developing country and that the Government had only very limited resources at its disposal.

25. Some members of the Committee had drawn attention to the need to highlight specific cases of torture. In that connection, he admitted that one of the failings of the Ecuadorian judicial system was the slowness of its proceedings, although attempts were being made under the reform currently in progress to speed them up, particularly by making use of the services of law students. Unfortunately, a large percentage of detainees had to wait months, if not years, before appearing before a court and it was not unusual for the period spent in pre-trial detention to be longer than the actual prison

sentence. In order to remedy that situation, the Supreme Court of Ecuador had undertaken, in cooperation with the Institute for the Prevention of Crime and the Treatment of Offenders in Latin America, to set up a project to improve the administration of justice.

26. In reply to a further question, he said that the current Constitution of Ecuador had been in force since 10 August 1979 and that certain amendments had been introduced in 1983. Probably the reason it was called the Political Constitution of the Republic of Ecuador was that it defined the structure of the State.

27. Some members of the Committee had stressed that torture could never be justified in any circumstances. While his delegation agreed, it pointed out that there were certain circumstances, such as self-defence, which might justify human rights violations of that kind.

28. In reply to a question on compensation, he said that, under the Constitution, the State was required to compensate individuals for any damage they had suffered as a result of the operation of public services or acts performed by public officials. Unfortunately, there was as yet no law governing the matter. Likewise, there were as yet no guarantees, either of moral and financial reparation, or of medical rehabilitation, for victims of torture, although the Government recognized that such guarantees would be desirable.

29. Referring to the state of emergency, he pointed out that President Borja had declared a state of emergency on only one occasion, in one specific sector and covering a limited area, in order to deal with serious difficulties involving workers in the oil industry, which was the backbone of Ecuador's economy. Even when resorting to emergency measures, the President of the Republic would not suspend fundamental rights, such as inviolability of life and personal integrity. He was glad to be able to say that there were no political prisoners in his country. Moreover, the law provided that detainees had the right to communicate with a lawyer and the right to remain silent when interrogated. Under the Code of Penal Procedure, physical or moral force could not be used to obtain a confession of guilt.

30. With regard to possible remedies, persons who claimed to be the victims of acts of torture could appeal either to the ordinary courts, the Court of Constitutional Guarantees, the Ad Hoc Human Rights Committee, the Office of the Under-Secretary of the Minister of the Interior or other bodies. Non-governmental organizations and the press also played a vital role in that connection.

31. The Criminal Investigation Service had been disbanded. Former members of the service had for the most part been reassigned to other departments of the police force not concerned with investigations.

32. As to abuses committed by police officers, it should be realized that Ecuador was in a difficult situation. As was well known, it was located between Colombia and Peru and was thus at the very heart of the battle to control drug trafficking. In addition, poverty tended to foment social violence. The Government was nevertheless making every effort to overcome those problems and to ensure that human rights were respected.

33. Concerning the rights of aliens, it should be noted that, under the law, aliens enjoyed the same rights as nationals, with certain exceptions. Those exceptions basically involved the right to vote and the right to stand as a candidate for election, the right to hold public office and the right to own property in areas of national security.

34. The maximum sentence was 16 years' rigorous imprisonment. Under the ordinary law regime, it was not cumulative; however, under the special regime applicable to drug traffickers, sentences might total 25 years. Rigorous imprisonment and ordinary imprisonment were both penalties involving deprivation of liberty, the first for serious offences and the second for less serious offences.

35. In reply to a further question, he said that "internal catastrophe" meant an event such as an earthquake which seriously disturbed the normal conduct of everyday activities.

36. Regarding the appointment of judges, the judges of the Supreme Court, the Tax Court and the Administrative Court were appointed by the National Congress; the judges of lower courts were appointed by bodies at a higher level in the judicial hierarchy. A debate was currently in progress on the depoliticizing of the higher ranks of the judiciary.

37. Referring to the treatment of prisoners, he said that the penal system in Ecuador was designed to rehabilitate offenders, although, in practice, and despite the Government's efforts, much still remained to be done before that objective could be achieved. Special penal proceedings were applicable to juvenile offenders, who were housed in penal institutions separate from those of adults. There were no high security prisons.

38. Human rights defence lawyers in the public service still existed in Ecuador, even though in practice they did not always have the resources they needed in order to operate. However, it had recently been decided to allocate budget resources to the human rights defence lawyers and for legal aid for those most in need.

39. In conclusion, he said that President Borja, his Government and all the officers in his service were determined to persist in their efforts to eradicate torture, despite the country's economic problems.

40. The CHAIRMAN thanked Mr. Medina López and, in accordance with the Committee's usual practice, asked members if they had any further questions or comments. Noting that that was not the case, he invited the country rapporteur to present his conclusions.

41. Mr. GIL LAVEDRA (Country Rapporteur), speaking also on behalf of Mr. Sorensen, alternate country rapporteur, thanked the delegation of Ecuador and congratulated it on its work. He had taken note with satisfaction of the efforts the Government of Ecuador was making to improve the judicial system, as well as to provide training for law enforcement and medical personnel, an essential element in action to combat torture.

42. However, there were certain areas in which further efforts were needed. With regard to the division of the Government's powers, any measures involving deprivation or restriction of liberty should be taken by judges, not by administrative officials. According to domestic legislation in its present form, a large number of officials were empowered to take decisions relating to the liberty of the individual, particularly the so-called "examining magistrate", who had no judicial function and was in fact an official of the Ministry of the Interior. Any matters relating to the liberty of the person should be for the judge to decide; that would guarantee effective protection of human rights. In addition, as the representative of Ecuador himself had pointed out, there would be a need to adapt and modify a number of provisions of domestic law. In that connection, he drew attention to the disparity between article 141 of the Constitution, which laid down the powers of the Court of Constitutional Guarantees, and Ecuador's penal legislation. The special legal regime, the existence of which went some way to explain why the trials of perpetrators of acts of torture had gone on for so long, should also be reformed.

43. Where the application of the Convention was concerned, he noted that article 25 of the Penal Code, even when interpreted in its broadest sense, was not sufficient to comply with article 4 of the Convention, which required that acts of torture should constitute offences under criminal law and should be punishable by appropriate penalties. The severest penalty was that provided for under article 187 of the Penal Code, which covered only the infliction of bodily harm.

44. The Penal Code should also be brought into line with article 2, paragraph 3, of the Convention concerning an order from a superior officer or a public authority and with article 3 relating to the expulsion, refoulement and extradition of aliens. The law should also be further developed regarding not only compensation, but also full rehabilitation, for victims of torture.

45. He nevertheless noted with satisfaction that the Government of Ecuador was strongly determined to combat torture. The Committee against Torture would be glad to provide it with assistance in that connection.

46. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee endorsed the conclusions of the country rapporteur and alternate country rapporteur. He thanked the delegation of Ecuador and said the Committee would look forward to considering its additional report in some 18 months' time.

The meeting rose at 6 p.m.